

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL

m/049/021



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND HINTZE
CHIEF DEPUTY

Protecting Utah • Protecting You

KIRK TORGENSEN
CHIEF DEPUTY

22,
April 21, 2004

Stephen Powell
dba Powell Rock
376 Giruard Avenue
Price, Utah 84501

Dan Powell, dba Emery Resources,
Hand delivered and sent in care of
Sidney Balthasar Unrau
Courtyard at Jamestown
3610 North University Avenue #375
Provo, Utah 846034

VIA FAX (801) 705-8480

Re: Reclamation or Cherry Hill Park Mine.

Dear Dan and Stephen Powell and Mr. Unrau:

I was contacted by you on April 20, 2004 and urged to allow removal of a 500 ton portion of the stockpiled materials at the Cherry Hill mine site in order to determine the feasibility of selling the stockpiled material to Sunnyside Cogeneration plant. Such a proposal had been arranged as part of the agreement in February with Neilson Construction and Emery Resources.

We have consented to your taking a sample of the material for testing based on the "urgent" situation you have described, subject to payment of an upfront amount to be used toward reclamation of the mine site and subject to our finalizing an agreement for completion of reclamation of the site along the lines of the prior agreement with Neilson. I understand Neilson is no longer willing to perform and that Stephen Powell dba Powell Rock is willing to be a party to the agreement. This agreement is intended to provide for removal of the stockpiled materials in exchange for an agreement to use a portion of the funds received and other funds if needed to reclaim the mine site and satisfying Mr. Dan Powell and Emery Resources obligations for reclamation.

You have paid to the Division the sum of 500 dollars to begin removal of the 500 tons of material and we met yesterday and discussed the proposed agreement based on the prior

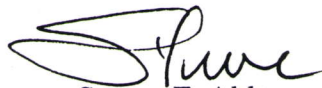
Agreement with Neilson. Changes were made as we discussed the contract and you were given copies to review with your attorney and family. At the time there was a question concerning what the final reclamation plan required. There were also questions concerning the payment of money upfront to allow for the removal of the test sample and to begin removal.

The attached Agreement is provided to you for review and/or for your signature and return. The reclamation summary is enclosed and will be an exhibit to the agreement. This agreement is being proposed as part of a workout, and potential resolution of the outstanding liability of Dan Powell and Emery Resources to complete reclamation at the Cherry Hill park mine based on the Board's order. Accordingly, your obligations and rights are based on the terms of this agreement only, and not pursuant to the general procedures of the Division.

Please review and return as soon as possible. The removal of the sample has been permitted as being in the interest of all parties toward a source of payment for reclamation but the amount due in advance for removal of the sample must be paid. In addition, the right to continue with this proposal will depend on reaching and executing an Agreement and payment of money into the escrow as provided in the Agreement.

Finally, you should understand that future mining at this site will require a new permit and an application will need to be submitted to the Division for review in accordance with the Division's normal procedures. If you are hoping to make such an application, you should anticipate the need to submit the required information with an adequate surety, and allow for the time required for its review.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Alder", with a stylized flourish at the end.

Steven F. Alder
Assistant Attorney General

cc: Mary Ann Wright
Wayne Hedberg

jb
cc: Mary Ann Wright, OGM
Steve Alder, AAG
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Reclamation Plan - Summary

Emery Industrial Resources

Cherry Hill Park Quarry

M/049/021

(April 22, 2004)

Disclaimer: The reclamation plan summarized below considered site conditions as anticipated at the end of mining. Current site conditions may differ substantially from the anticipated 'end of mining' conditions. Therefore, volumes, acreages, and tasks may require modification from those used in the submitted documents.

Rule R647-4-110 - RECLAMATION PLAN

110.1 postmining land use

The goal of reclamation is to return the lands affected to a suitable condition to support the pre-mining land use of grazing and wildlife habitat.

110.3 - Surface facilities to be left

The only facilities that will remain following reclamation of the Cherry Hill Park Quarry is the gate, access road, the old tippie, and the metal building. All other facilities (permanent or temporary in nature) will be removed or reclaimed.

110.5 - Reclamation Plan, vegetation planting program and topsoil redistribution

At a minimum, the following reclamation tasks will be required to reclaim the Cherry Hill Park Quarry. Volumes and acreages are those provided with the original Notice of Intention and subsequent correspondence. Currently 20.6 acres have been affected by mining operations, of which 0.85 acres will receive no reclamation (other than general clean up) since this acreage is involved with the access road and structures that will remain. Reclamation treatments as described will take place on the remaining 19.75 acres.

1) Clean-up and removal of structures.

The only permanent structures at the site consist of a small outbuilding and a tippie. As per written landowner request, these two structures will remain. Temporary structures such as crushers, conveyor belts, office trailers, etc. will be removed from the site.

2) Weed control

Much of the area has been infested with thistle. This noxious weed will need to be controlled as per the direction of the Utah County Weed Supervisor.

3) Backfilling, grading and contouring.

All highwalls (cut banks) will be regraded or backfilled to a 3-horizontal to 1-vertical slope. Approximately 3,000 cubic yards (yd³) of overburden material will be needed.

The entire area will be covered with overburden materials at one-foot depth. Approximately 27,000 yd³ of material will be required. Any excess materials will be graded to a maximum 3h:1v slope.

The area will be graded to blend with surrounding topography. The natural drainage channel will need to be re-established.

4) Soil material redistribution, stabilization and amendments.

An estimated 4,900 yd³ of topsoil has been salvaged. This will be re-spread at an average depth of 6 inches over 6 acres.

An additional six inches of suitable plant growth medium (overburden/fines) will be spread over the remaining disturbed area (approximately 9,800 yd³ of material will be needed).

Composted manure will be spread over the entire area. On the area receiving six inches of topsoil, the rate will be five tons per acre. For the remaining 13.75 acres, the rate will be 10 tons per acre (approximately 228 tons of composted manure will be required). To prepare a proper seed bed, after the composted manure is spread, the entire area will be ripped to a one-foot depth. Spacing between ripper teeth shall be two feet. All ripping should be done on contour.

5) Revegetation.

The area will be seeded with the attached seed mix at the stated rates. Seeding will not be performed prior to October 1 of any given year and must be completed by October 31. A copy of all seed invoices and tags will be supplied to the Division within 10 days following seeding.

If broadcast seeding is used, timing of the topsoil/plant growth medium, compost application and ripping should be such that the area can be seeded immediately upon completion of these tasks. No commercial fertilizer will be required for this site.

6) Safety gates, berms, barriers, signs, etc.

Once seeded, the area will be signed to indicate that the area has been reclaimed.

Reclamation Plan Summary

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Cherry Hill Park

M/049/021

April 22, 2004

7) **Demolition, removal or burial of facilities/structures, regrading/ripping of facilities areas.**

Compacted areas will be ripped prior to application of any reclamation treatments. This would include pads, storage areas, travel areas (other than the access road) and pit floors.

8) **General site clean up and removal of trash and debris.**

All trash and debris will be cleaned up from the site and hauled to an approved landfill. No garbage, trash, debris will be burned or buried on site.

9) **Supervision during reclamation.**

The Division will be notified at least 1 week prior to any reclamation activities so that appropriate site visits can be scheduled during reclamation.

Recommended Revegetation Species List
for

Emery Industrial Resources
Cherry Hill Park Mine
S/049/021

Prepared by DOGM August 5, 1994

<u>Common Name</u>	<u>Species Name</u>	<u>*Rate lbs/ac (PLS)</u>
Slender wheatgrass	<u>Agropyron trachycaulum</u>	1.5
Thickspike wheatgrass	<u>Agropyron dasystachum</u>	1.5
Mountain brome	<u>Bromus marginatus</u>	1.5
Piute orchard grass	<u>Dactylis glomerata</u>	0.5
Great basin wildrye	<u>Elymus cinereus</u>	1.5
Ladak alfalfa	<u>Medicago sativa 'ladak'</u>	1.0
Yellow sweetclover	<u>Melilotus officinalis</u>	0.5
Small burnet	<u>Sanguisorba minor</u>	1.5
Mountain penstemon	<u>Penstemon strictus</u>	0.5
Mountain big sagebrush	<u>Artemisia tridentata vaseyana</u>	0.1
Rubber rabbitbrush	<u>Chrysothamnus nauseosus</u>	0.25
Serviceberry	<u>Amelanchier alnifolia</u>	1.0
Blue elderberry	<u>Sambucus caerulea</u>	1.0
Bitterbrush	<u>Purshia tridentata</u>	1.0
Total		13.35 lbs/ac

***This is the recommended broadcast seeding rate.**
If the species are to be drill seeded, decrease the rate by 1/3.

AGREEMENT FOR SETTLEMENT AND RECLAMATION

This Agreement is entered into this ____ day of April, 2004 between Dan Powell and Emery Resources, Inc. (hereinafter collectively referred to as Emery); Stephen Powell dba as Powell Rock (Rock); and the Division of Oil, Gas, and Mining (Division).

RECITALS

1. Emery is the current holder, as lessee, of certain rights to mine real property (the lease) located near Beaver Creek in Utah County, Utah; known as the Cherry Hill Park Limestone Quarry and more particularly described as being the NW ¼ Section of Section 36, Township 11 South, Range 8 East, Salt Lake Base and Meridian (mine site), and that the lease is current and that Emery has the right under the lease to remove the stockpiled materials.

2. The Division has obtained an Order from the Board of Oil, Gas, and Mining (Board) dated May 28, 2003 terminating Emery's small mining permit, requiring that Emery cease mining and immediately commence reclamation of the mine site, and providing that upon failure of Emery to perform the required reclamation, the Division is authorized to complete the reclamation and to recover all costs of reclamation from Emery.

3. Emery has failed to perform the required reclamation and the Division intends to proceed with actions including litigation as necessary to complete the reclamation of the mine site at Emery's expense.

4. Rock is interested in obtaining certain stockpiled limestone materials from the mine site, and is willing to pay for the materials on a price per ton, subject to such restrictions on the nature of the mining activities as the Division may impose to further the reclamation at the mine site.

5. Rock requires an initial sample of 500 tons of stockpiled material to be made available at the earliest convenience of the parties to determine if the material is suitable for the purpose of the anticipated sale.

6. The Division has previously tentatively approved a mining and reclamation plan (plan) as submitted by Emery prior to the termination of the mining permit, and a summary of that plan is attached as exhibit A.

7. The parties are desirous of entering into this agreement to facilitate the sale of stockpiled materials from the mine site in order to further the reclamation of the mine site, and to reduce and possibly resolve the obligations of Emery.

TERMS

NOW THEREFORE, in consideration of the terms and conditions hereof the parties agree as follows:

1. Emery shall assume responsibility for and shall enter into any agreements, and/or make all necessary arrangements with the Owner of the mine site to remove and sell stockpiled materials from the mine site.

2. Rock shall deposit with the Division the sum of \$1000.00 (consisting of a check for \$500 paid to the Division on April 20, 2004 and a check for \$500 paid to the Division upon execution of this agreement), which amount shall be placed in an escrow account to be established at a bank agreed upon by the parties in the form attached hereto to be held for the benefit of the Division as security for the performance of the terms of this agreement.

3. Upon payment of the final payment of the \$1000 due upon execution of this agreement, the Division shall grant Rock the right to complete the removal from the mine site of an initial sample of not more than five hundred (500) tons of stockpiled limestone material from a location as agreed upon with the Division.

4. Rock shall notify the Division within 25 days of the date of the first shipment of initial sample material from the mine site, if the material meets the requirements of the purchaser. If the test material is not suitable for the intended sale, this agreement shall be terminated, the initial payment shall be forfeited to the Division, and no party shall have any further obligations under this agreement.

5. If Rock determines that the materials are suitable for sale, then upon payment into escrow of an additional \$4000.00 or upon providing the Division with a bond, surety, or other acceptable guaranty in the amount of \$4000.00, it shall have the right to remove a portion of the presently stockpiled materials (estimated to be about 15,000 tons in existing stockpiles at the mine site) subject to the following conditions and limitations:

- a. The material shall only be removed upon a written notice to the Division of the amount of material to be removed and the anticipated dates of hauling from the site;
- b. The material shall only be removed from locations at the mine site as authorized and identified by the Division in writing, provided the Division may refuse to approve the sale and removal of any portion of the stockpiled materials that it determines to be necessary for reclamation of the mine site.
- c. Rock shall, within 30 days of each shipment, pay to the escrow account a sum equivalent to \$1.00 per ton of material removed from the site based on sales records and shipping receipts to be provided not

less than monthly, and verified by the Division. Failure to make timely payment into escrow will be basis for refusing any additional sales and for terminating this agreement.

- d. As additional consideration for the right to remove the stockpiled materials, Rock shall upon commencement of shipments begin work to reclaim those portions of the mine site affected by prior mining, in accordance with the provisions of the mining and reclamation plan as proposed by Emery prior to the termination of its permit and attached as Exhibit A.
- e. The moneys paid into escrow shall be released by the Division to Rock to compensate it for the costs of reclamation as follows: (i) Rock shall make an application for a partial release of money from the escrow upon completion of reclamation on a substantial part of the mine site; (ii) the Division shall release from escrow only such amount that will permit the Division to retain in the escrow account a sum sufficient to complete reclamation of the site according to its reclamation estimate; (The amount retained in escrow shall include an amount sufficient to assure revegetation success); and (iii) upon final reclamation of the mine site as determined by the Division, or establishment of an acceptable reclamation surety as required by the Board's rules, the balance of the escrow account shall be released to Rock.
- f. Reclamation required by paragraph 5e shall commence in conjunction with the removal of stockpiled materials and shall be done in accordance with the previously proposed mining and reclamation plan or a modification acceptable to the Division.

6. This Agreement is entered into as a means of satisfying the obligations of Emery to reclaim the mine site and pursuant to the rights of the Division to reclaim the site and to charge Emery for the costs of such reclamation, and does not constitute a permit to conduct mining operations.

7. This agreement authorizes Rock to remove stockpiled materials only and does not authorize other mining activities.

8. This agreement is entered into in lieu of litigation against Emery to collect the amount of the cost of reclaiming the mine site, and all of the funds paid into the escrow pursuant to this agreement shall be used to reclaim the site as the Division determines is necessary and appropriate for the conditions at the mine site and its potential post mining use.

9. In the event Rock shall fail to complete reclamation as required by paragraph 6 above, the Division may use the funds in escrow as it deems necessary to complete reclamation, and the amounts collected shall reduce the obligations of Emery under the Order of the Board, which shall remain in effect until the provisions therein have been satisfied.

10. Notwithstanding the provisions in this agreement, upon the posting of an adequate bond to insure complete reclamation of the site in accordance with an approved mining and reclamation plan as required by the applicable laws and regulations, this agreement shall terminate and the funds if any remaining shall be returned to Rock or such other party as agreed by Rock and Emery.

11. This Agreement is not a Waiver or relinquishment of any rights that the Division may have to pursue collection of the costs of reclamation as authorized by Board Order from Dan Powell and Emery, which rights are hereby expressly reserved by the Division.

12. This Agreement represents the entire understanding of the parties and shall not be modified except in a written modification signed by all of the parties hereto.

This Agreement is executed by the following persons on the date indicated who represent that they have authority to enter this agreement on behalf of the respective party named and intend to be bound thereby.

Emery Resources, Inc.

Dan Powell

By _____

Its _____

Dated _____

Dated _____

Stephen Powell, dba Powell Rock

Utah Division of Oil, Gas, and
Mining

By _____

By _____

Its _____

Its _____

Dated _____

Dated _____